

Order

Entered: March 11, 2003

Michigan Supreme Court
Lansing, Michigan

Maura D. Corrigan,
Chief Justice

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Clifford W. Taylor
Robert P. Young, Jr.
Stephen J. Markman,
Justices

2002-34

Proposed Amendment of Rules 7.204,
7.210, 7.211, 7.212, and 7.216
of the Michigan Court Rules

On order of the Court, this is to advise that the Court is considering amendment of Rules 7.204, 7.210, and 7.212 of the Michigan Court Rules, as proposed by the Court of Appeals as part of its delay-reduction plan. In addition, the Court is considering amendment of Rules 7.211 and 7.216, as proposed by the Court of Appeals to deal with requests for damages because of vexatious proceedings. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal, or to suggest alternatives. The Court welcomes the views of all. This matter will be considered at a public hearing before the Court makes a final decision. The schedule and agendas for public hearings are posted on the Court's website, www.courts.michigan.gov/supremecourt.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[The present language would be amended as indicated below by underlining
for new text and strikeouts for text that would be deleted.
A staff comment immediately follows each proposal.]

Rule 7.204 Filing Appeal of Right; Appearance

(A) - (G) [Unchanged.]

(H) Docketing Statement. In all civil appeals, within 28 ~~14~~ days after the claim of appeal is filed, the appellant must file ~~two copies~~ one copy of a docketing statement with the clerk of the Court of Appeals and serve a copy on the opposing parties.

(1) - (4) [Unchanged.]

Staff Comment: The Court of Appeals anticipates that the shortened time period will enable its settlement office to evaluate cases earlier in the appeal process, thus saving time and money for both the Court and the parties.

Rule 7.210 Record on Appeal

(A) [Unchanged.]

(B) Transcript.

(1) Appellant's Duties; Orders; Stipulations.

(a)-(b) [Unchanged.]

(c) In an appeal from the circuit court in any action that relates solely to an order granting or denying summary disposition in whole or in part, or an order on motion for reconsideration thereof, only that portion of the transcript concerning the order appealed from need be filed. The appellee may file additional portions of the transcripts.

(c)-(e) [Renumbered (d)-(f), otherwise unchanged.]

(2) [Unchanged.]

(3) Duties of Court Reporter or Recorder.

(a) [Unchanged.]

(b) Time for Filing. The court reporter or recorder shall give precedence to transcripts necessary for interlocutory criminal appeals and custody cases. The court reporter or recorder shall file the transcript with the trial court or tribunal clerk within

(i)-(ii) [Unchanged.]

(iii) 42 days after it is ordered in any other interlocutory criminal appeal, ~~or custody case, or appeal that relates solely to an order granting or denying summary disposition in whole or in part;~~

(iv) [Unchanged.]

The Court of Appeals may extend or shorten these time limits in an appeal pending in the Court on motion filed by the court reporter or recorder or a party.

(c)-(g) [Unchanged.]

(C) - (F) [Unchanged.]

- (G) **Transmission of Record.** Within ~~21~~ 14 days after the briefs have been filed or the time for filing the appellee's brief has expired, or when the court requests, the trial court or tribunal clerk shall send to the Court of Appeals the record on appeal in the case pending on appeal, except for those things omitted by written stipulation of the parties. Weapons, drugs, or money are not to be sent unless the Court of Appeals requests. The trial court or tribunal clerk shall append a certificate identifying the name of the case and the papers with reasonable definiteness and shall include as part of the record:

(1)-(3) [Unchanged.]

(H)-(I) [Unchanged.]

Staff Comment: Although summary disposition appeals compose about 20% of the caseload of the Court of Appeals, they involve a minimal number of relatively short transcripts. The Court of Appeals believes that shortening the time to produce the transcripts will pose a minimal burden on court reporters while having a positive impact on a substantial portion of the caseload. Shortening from 21 to 14 days the time to forward lower court records will have a positive impact on all pending appeals, the Court of Appeals reasons.

Rule 7.211 Motions in the Court of Appeals

(A)-(B) [Unchanged.]

(C) **Special Motions.** [Unchanged.]

(1)-(7) [Unchanged.]

- (8) **Vexatious Proceedings.** A party's request for damages or other disciplinary action under MCR 7.216(C) must be contained in a motion filed under this rule. A request that is contained in any other pleading, including a brief filed under MCR 7.212, will not constitute a motion under this rule. A party may file a motion for damages or other disciplinary action under MCR 7.216(C) at any time within 21 days after the date of the order or opinion that disposes of the matter that is asserted to have been vexatious.

(D)-(E) [Unchanged.]

Staff Comment: The proposed amendment requires a separate motion to request damages or other disciplinary action for vexatious proceedings. To assure jurisdiction to consider the issue and to provide finality to the appeal, such a motion must be filed within 21 days after the date of the order or opinion that disposes of the matter that is asserted to have been vexatious. If the assertion concerns the entire appeal, the motion must be filed within 21 days of the date of the order or opinion that disposes of the entire appeal. If the assertion concerns a specific motion or motions filed by an opposing party, the motion for damages must be filed within 21 days of the date of the order disposing of the underlying motion or motions.

Rule 7.212 Briefs

(A) Time for Filing and Service.

(1) Appellant's Brief.

- (a) Filing. The appellant shall file 5 typewritten, xerographic, or printed copies of a brief with the Court of Appeals within

(i)-(ii) [Unchanged.]

- (iii) ~~56~~ 42 days after the claim of appeal is filed, the order granting leave is certified, or the transcript is filed with the trial court or tribunal, whichever is later, in all other cases. In a criminal case in which substitute counsel is appointed for the defendant, the time runs from the date substitute counsel is appointed or the transcript is filed, whichever is later. ~~The parties may extend the time within which the brief must be filed for 28 days by signed stipulation filed with the Court of Appeals.~~ The Court of Appeals may extend the time on motion, but only for the specific time required and only for good cause shown.

(b) [Unchanged.]

(2) Appellee's Brief.

- (a) Filing. The appellee shall file 5 typewritten, xerographic, or printed copies of a brief with the Court of Appeals within

(i) [Unchanged.]

- (ii) 35 days after the appellant's brief is served on the appellee, in all other cases. ~~The parties may extend this time for 28 days by signed stipulation filed with the Court of Appeals.~~ The Court of Appeals may extend the time on motion, but only for the specific time required and only for good cause shown.

(B)-(F) [Unchanged.]

- (G) Reply Briefs. An appellant or a cross-appellant may reply to the brief of an appellee or cross-appellee within ~~21~~ 14 days after service of the brief of the appellee or cross-appellee. Reply briefs must be confined to rebuttal of the arguments in the appellee's or cross-appellee's brief and must be limited to 10 pages, exclusive of tables, indices, and appendices, and must include a table of contents and an index of authorities. No additional or supplemental briefs may be filed except as provided by subrule (F) or by leave of the Court.

(H)-(I) [Unchanged.]

Staff Comment: The proposed changes in subrule (A) would shorten the time for filing the appellant's brief from 56 to 42 days and allow extensions only on motion and for good cause. The proposed amendment of subrule (G) would reduce the time for filing a reply brief from 21 to 14 days (consistent with the time for forwarding the lower court record).

Rule 7.216 Miscellaneous Relief

(A)-(B) [Unchanged.]

(C) Vexatious Proceedings.

- (1) The Court of Appeals may, on its own initiative or the motion of any party filed under MCR 7.211(C)(8), assess actual and punitive damages or take other disciplinary action when it determines that an appeal or any of the proceedings in an appeal was vexatious because

(a)-(b) [Unchanged.]

- (2) [Unchanged.]

Staff Comment: The proposed change would be consistent with the proposed amendment of MCR 7.211(C)(8).

Staff comments are published only for the benefit of the bench and bar and are not an authoritative construction by the Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on these proposals may be sent to the Supreme Court Clerk in writing or electronically by June 1, 2003, at P.O. Box 30052, Lansing, MI 48909, or MSC_clerk@courts.mi.gov. When filing a comment, please refer to ADM File No. 2002-34. Your comments and the comments of others will be posted at www.courts.michigan.gov/supremecourt.



I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

March 11, 200⁵₃

Corbin R. Davis

Clerk